



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2022-0199]**

#### **Hours of Service of Drivers: Application for Exemption; Wayne Moore, Jr.**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny the application from Wayne Moore, Jr.

for an exemption from four provisions of the Federal hours-of-service (HOS) regulations.

FMCSA analyzed the application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2722 or [richard.clemente@dot.gov](mailto:richard.clemente@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Participation**

##### **Viewing Comments and Documents**

To view comments, go to [www.regulations.gov](https://www.regulations.gov), insert the docket number “FMCSA-2022-0199” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, and click “View Related Comments.”

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](https://www.regulations.gov), insert the docket number “FMCSA-2022-0199” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR § 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR § 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR § 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR § 381.300(b)).

## **III. Background**

### *Current Regulatory Requirements*

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR part 395 limit the time drivers of commercial motor vehicles (CMVs) may drive. The HOS regulations in 49 CFR § 395.3(a)(1) prohibit driving after 11 hours driving or 14 consecutive hours on duty until the driver has been off duty for a minimum of 10 consecutive hours, or the

equivalent of at least 10 consecutive hours. Under 49 CFR § 395.3(a)(2), commonly referred to as the 14-hour “driving window,” a driver has 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. Section 395.3(a)(3)(ii) requires drivers to take a 30-minute break when they have driven for a period of 8 cumulative hours without at least a 30-minute interruption. The break may be satisfied by 30 consecutive minutes of on-duty not driving, off duty, or sleeper berth time, or any combination of these taken consecutively. Section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days.

#### *Applicant’s Request*

Mr. Moore requests a five-year exemption from 49 CFR § 395.3(a)(1) and (2), § 395.3(a)(3)(ii), and § 395.3(b)(2). Mr. Moore is a CMV operator who has driven for over 25 years, and currently works for a large transportation company in Indiana. He states that he would like the ability to split off-duty time into periods that are more conducive to proper rest and sleep without having to comply with the HOS regulations. He also states that he has the ability to decide whether he is sufficiently rested to drive.

#### **IV. Method to Ensure an Equivalent or Greater Level of Safety**

The applicant believes that his level of safety under the exemption, if granted, would be better than he could achieve by complying with the HOS regulations because he would be able to get the proper rest when needed. He states that he can safely drive and knows when he is tired and has an excellent driving record, with no accidents or incidents and has never had any HOS violations.

#### **V. Public Comments**

On December 1, 2022, FMCSA published Mr. Moore’s application and requested public comment (87 FR 73804). The Agency received 79 total comments, the majority from individual drivers and owner-operators. Thirty supported the request, 30 opposed it, and 18 commenters offered no position either for or against the request. The Truck Safety Coalition, Citizens for

Reliable and Safe Highways, and Parents Against Tired Truckers made the following joint comment: “[we] request this inadequately justified exemption to HOS requirements be denied in full. Large truck crash fatalities continue to increase at an alarming pace, and it is incumbent on the Department of Transportation and FMCSA to take every measure possible to reverse this trend and affirm life safety as its top priority by denying the request.” General themes from other opposing comments included: 1) HOS rules do save lives and are there for everyone’s safety; 2) the Agency cannot grant this request for individuals; and 3) there is no scientific data to support the HOS claims.

Commenters supporting the exemption suggested a graduated program that allowed more driving hours for drivers with more driving experience. One commenter said: “I feel that the FMCSA should take a 3-step approach to the hours-of-service requirements and implement rules for 5-10-15 year drivers who have demonstrated a level of safety equal to or greater than what was achieved with the hours of service.” None of the commenters who supported the exemption request presented relevant data or reasoning to demonstrate how an equivalent level of safety would be met if the exemption were granted. Those taking no position either for or against Mr. Moore’s application provided general comments and complaints about the HOS and the Electronic Logging Device regulations and suggested that the Agency needs to revise them.

## **VI. FMCSA Safety Analysis and Decision**

After evaluating Mr. Moore’s application and the public comments, FMCSA denies the exemption request. Under 49 U.S.C. 31315(b)(1), to grant an exemption, FMCSA must “find that the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” Among other requirements, 49 CFR § 381.310(c)(5) requires a person seeking an exemption to explain how it would ensure that it could achieve an equivalent level of safety. Mr. Moore failed to explain how he would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. Although Mr. Moore stated that he would be responsible for ensuring that he has adequate rest

and that he has an excellent driving record and no HOS violations, those representations do not provide a basis from which the Agency could conclude that the proposed exemption would provide an equivalent level of safety.

The Agency's HOS regulations are designed to prevent fatigued drivers from operating by imposing limits on when and how long an individual may drive, to ensure that drivers stay awake and alert, and to reduce the possibility of cumulative fatigue (85 FR 33396, Sept. 29, 2020). A fatigued driver is more prone to perform poorly on tasks requiring the vigilance and decision-making needed to operate a CMV safely than a person who is alert. The Agency also agrees with commenters who argued that exempting one individual from the HOS regulations could open the door for a huge number of similar exemption requests. Such a result would be inconsistent with a primary goal of the HOS regulations.

For the reasons stated, FMCSA denies Wayne Moore, Jr.'s exemption application.

Robin Hutcheson,  
Administrator.

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